



WISCONSIN REGULATORY DIGEST

A Publication of the DEPARTMENT OF REGULATION AND LICENSING FOR AUCTIONEERS AND AUCTION COMPANIES

Volume 4, No. 1

September, 1998

A Message From the Board Chair Richard O. Lust

Several board members, including me, have been teaching continuing education courses for auctioneers throughout the state. We have been most impressed with the response of all of you to the continuing education requirement and the courses themselves. You have told us that you have learned a lot and that you were grateful for the opportunity to fill in some missing informational gaps. We learned from you, too. You convinced us that some of the advertising requirements are unnecessary and too costly. That's why the Department is going to simplify them.

The Board regrets that this continuing education program will be a "one-shot" process and that in future years (unless the law is changed) you will not be required to obtain continuing education. The Board had hoped that this would be an on-going requirement; however, some legislators looked at it differently. Admittedly, some of you

may well side with the legislators on this issue, and we do respect your position and that of the legislators.

The Board felt that the purpose for continuing education was to make all registered Wisconsin auctioneers fully aware of the new - as well as the old - laws and rules affecting our business in an on-going effort to make all of us more professional.

The beauty of this whole process has been that you were introduced to formal continuing education which focuses on the laws of the state of Wisconsin, rather than other technical issues such as how to successfully conduct various aspects of your business and how to chant an auction. Now it's up to you. You can continue to take continuing education, **because you see the value of it**, not just because the Board requires it. I'm convinced that many of you will continue to take courses in the future and I'm equally convinced that the Wisconsin Auctioneers Association will continue to take the lead in providing this education at times and locations that are convenient to you.

The Board urges those of you who believe that more professional education is beneficial to make your feelings known to both your Association and the Board. Letters to us help us better understand your feelings. We need your input.

THE WISCONSIN AUCTIONEER BOARD

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Renewal of Registration

We would like to repeat a paragraph we wrote in the last newsletter. Auctioneer and auction company registrations (except temporary registrations) will expire on December 31, 1998. The Department will send to registrants a renewal notice and information about the renewal process approximately 6 weeks before the renewal deadline. Registrants who wish to renew in a timely manner and be able to legally conduct auctions as of January 1, 1999, must submit their renewal application and the renewal fee (\$100 for auctioneers; \$41 for auction companies) to the Department by December 31, 1998. Registrants may submit their application later; however, if they do, they will not be able to conduct or manage auctions in Wisconsin until they actually have received a renewal certificate. Any registered auctioneer (not an auction company or an officer of an auction company who is not a registered auctioneer) who submits a renewal application without the required evidence of completion of continuing education will receive a notice of having filed an incomplete application. The auctioneer's registration will not be renewed until the auctioneer subsequently submits proof of having completed the continuing education.

Legislative Changes

1997 Wis. Act 139: Under the new law, effective May 5, 1998, Examining Board, the Department, and other regulatory authorities are authorized to issue administrative warnings. An administrative warning may be issued to close an investigation if a regulatory authority determines that no further action is warranted because the complaint involves a first occurrence of a minor violation and the warning protects the public.

An administrative warning puts the professional on notice that if the misconduct is repeated, the incident that was the basis for the warning can be used to prove that the person warned knew the conduct was prohibited. A warning is not discipline and may be issued without a formal complaint or a hearing. The contents of the warning shall be private and confidential.

A credential holder may have a warning reviewed before the department or board that issued the warning. The act requires the department to promulgate rules establishing uniform procedures for administrative warnings. The text of this act is available from the department or can be viewed on the Internet at <http://www.legis.state.wi.us/billtrack/acts/97acts.html>.

1997 Wis. Act 191: In April 1998, legislation was enacted which provides for suspension of credentials for failure to pay family support or for failure to comply with a subpoena or warrant

related to paternity or support proceedings. The determination of failure to pay family support or failure to comply with a warrant or subpoena will be made by county support agencies or the Department of Workforce Development.

The Department of Workforce Development, after proper notice and provision for hearing, will certify to the Department of Regulation and Licensing that a professional who holds a credential issued by the department, or who is paying for a credential is delinquent in support or has failed to comply with a subpoena or warrant. The department then shall restrict, limit or suspend a credential or deny an application for an initial credential or for renewal of a credential. The credential will remain restricted, limited or suspended until the department receives notification of release from the Department of Workforce Development. However, credentials shall not be sanctioned for more than five years, if instituted because of delinquency in support, or for more than six months if instituted for failure to comply with a subpoena or warrant. This act became effective in April 1998. The text of the new law is available in most public libraries and can be viewed on the Internet at <http://www.legis.state.wi.us/billtrack/acts/97acts.html>.

The new family support collection act requires the Department of Regulation and Licensing to collect social security numbers from all individuals who apply for new credentials. Applications from individuals who do not submit their social security number will be denied. The social security numbers collected may be disclosed only to the Department of Workforce Development for the purpose of enforcing the Family Support Collection Act, or the Department of Revenue for the purpose of checking for tax delinquencies.

1997 Wisconsin Act 237: Since 1996, the law has required the department to verify that applicants for credential renewal are not delinquent in payment of Wisconsin state taxes. The department is required to deny renewal if the Department of Revenue certifies that an applicant is tax delinquent.

Effective January 1, 1999, the scope of the law will expand to apply to other state agencies, including the Department of Transportation and the Department of Natural Resources. The law will also change to include applicants for new licenses and current credential holders. After January 1, 1999, the Department of Regulation and Licensing is required to deny the applications for an initial credential if the applicant is certified by the Department of Revenue as being liable for delinquent state taxes. The Department of Regulation and Licensing will also be required to

revoke the credential of current credential holders who are tax delinquent.

A person denied or revoked because of a tax delinquency status may request the Department of Revenue to review the certificate of tax delinquency at a hearing.

The text of the new law is in 1997 Act 237 at section 307 and sections 532-551. Act 237 is available at most public libraries and can be viewed on the Internet at <http://www.legis.state.wi.us/billtrack/acts/97acts.html>.

1997 Wis. Act 237. The Budget Adjustment Bill contained an amendment to the sales tax provisions in laws enforced by the Department of Revenue. This amendment had not been proposed by the Auctioneer Board or the Department of Regulation and Licensing. The amendment would have stated that an "occasional sale" includes an auction that is the sale of personal farm property or household goods and that is held at a location where the auctioneer holds 12 or fewer auctions during the year. The current statute says that an "occasional sale" is an auction of personal farm property or household goods that is held at regular intervals. **The amendment was vetoed by Governor Tommy G. Thompson.** The text of the vetoed provision is in 1997 Act 237 at section 313c. Act 237 is available at most public libraries and can be viewed on the Internet at <http://www.legis.state.wi.us/billtrack/acts/97acts.html>.

Complaints Against Registrants

Since January 1, 1998, the Auctioneer Board has closed 8 investigative files, involving complaints against registered auctioneers or auction companies. The following summaries of seven of the cases will give you a flavor of the complaints received by the Board and may motivate you to be more careful or cautious in certain situations. Note that these summaries are as brief as possible and they do not describe all of the investigation that occurred.

Allegation: Sale of items for less than the minimum bid and failure to provide adequate contracts. Complainant took a car and a chipper in good condition to an auction site. Complainant told the auctioneer he would not take less than \$1,000 for the car and \$250 for the chipper. Auctioneer sold the car for \$650 and the chipper for \$155. When the complainant confronted the auctioneer, the auctioneer said that it was a bad auction with low turnout and, since the items were already sold, there wasn't anything he could do. **Conclusion:** there may have been a minor or technical violation, but no formal discipline is warranted against one of the auctioneers involved

in the transaction. The other auctioneer can't be located at this time.

Allegation: There were multiple allegations about an auction; however, when the investigation showed that the auction occurred in Minnesota, the case was closed for no jurisdiction. The Wisconsin Auctioneer Board only has jurisdiction over auctions conducted in Wisconsin.

Allegation: Failure to comply with advertising rules and failure to provide financing which the auctioneer promised the seller that the auctioneer would provide to buyers at the time of sale. The ads do not mention financing and do not include any terms of sale, nor is there any other mention of financing. The auctioneer provided a copy of the current auction contracts and stated that his company has never advertised, nor has it ever promised this to prospective clients. **Conclusion:** there may have been a minor or technical violation, but a decision was made not to commence formal disciplinary action because the incident in question was not seriously harmful to the public. Letter of concern to be sent to the auctioneer, reminding him to be sure his contracts comply with all provisions of RL 124, Wis. Admin. Code.

Allegation: The auctioneer sold items on consignment in December, 1994, and January, 1995, and failed to pay the complainant. The complainant obtained a judgment against the auctioneer in Small Claims Court. **Conclusion:** the auction occurred before the Auctioneer Board had authority to discipline auctioneers.

Allegation: The complainant purchased a fake Tiffany lamp at an auction. The lamp supposedly came from an old Chicago estate and was an original estate item. The complainant paid thousands of dollars for it; however, it was of little value. The investigation led to the conclusion that the auctioneer received fake Tiffany lamps from a person who may have a practice of supplying items for an auction, attends and bids up the price and takes back those items which do not sell. This person also conducts auctions in Illinois. **Conclusion:** refer the case to federal authorities. Since the auctioneer is not currently registered in Wisconsin, place his registration on hold and pursue the matter in the future if he attempts to be registered again.

Allegation: Complainants agreed with an auctioneer that the cost of advertising would be split 50/50; however, the final settlement charged complainants 100% for the advertising. There was also a misunderstanding about putting a reserve for a minimum bid on a tractor, about selling items to family members on the day before

the auction date (a date which was incorrectly printed in the paper) about the sale of two chairs and the involvement of the children of the sellers. Conclusion: there is evidence to show that no violation occurred relating to elements in the contract which describe the property to be sold and the restrictions relating to the sale. There may have been a minor or technical violation relating to advertising, but compliance was gained and no disciplinary action warranted.

Allegation: The complainant attended a farm and antique auction. The complainant complained that there were additional items consigned to the auction by someone not connected with the estate. The complainant said that the auctioneer opened the bids himself and bought items. The auctioneer told us he stated at the beginning of the auction that he and his staff do buy items from time to time. He said that "if we do today, our bidding will be clear and open." The auctioneer also discloses at the beginning of the auction whether there are items consigned. There were some consigned items at this auction and this fact was discussed. The contract allowed the auctioneer and his staff to bid and it adequately addressed additional consigned items. Conclusion: insufficient evidence to show a violation occurred.

The Complaint Process

Complaints are processed in the following manner:

All complaints received by the Auctioneer Board and the Department are routed to the Division of Enforcement (DOE) where they are logged into the computer and given a number.

Complaints are screened by several board members, the supervisor of the DOE prosecutors and the supervisor of the DOE investigators and the bureau director. The complaint screening process results in a decision to open or not open a complaint for investigation. Sometimes additional information is requested of the complainant at this stage of the process. All boards and the department are now moving toward screening complaints at least once a month.

If a complaint is opened for investigation, it is assigned to a team in DOE. Teams consist of prosecutors, investigators, legal assistants and, in some cases, auditors. A specific prosecutor and investigator is assigned to the case and the investigator commences an investigation as soon as possible. The investigation generally includes corresponding with the complainant, the licensee and other people with relevant information. Documents are reviewed and the investigator often interviews people to obtain more information.

A board member is assigned to the case as an advisor. The board member offers suggestions to the investigator and, after the investigation is concluded, the advisor recommends that the case be closed for a certain specified reason or that the case proceed to possible disciplinary action.

If the case advisor recommends possible disciplinary action, a prosecutor reviews the file and requests additional investigation, if needed. The prosecutor usually offers the registrant an opportunity to agree to a resolution of the matter. The offer may be in the form of a written stipulation for some type of discipline, such as a revocation, suspension, limitation, reprimand, and/or an assessment of all or part of the costs of the investigation and prosecution. In some cases the prosecutor may try to arrange a settlement conference between the registrant and one or two board members. If the licensee rejects a stipulation or an offer for a settlement conference, the attorney schedules a hearing before an administrative law judge. The hearing is like a trial and the registrant may have an attorney represent him or her. After the hearing, the administrative law judge prepares a proposed decision and refers it to the Board.

If a case advisor recommends that a case be closed, the case is reviewed by the Board at its next meeting and the Board either concurs or refers the case for disciplinary action. Stipulations and proposed decisions are also referred to the Board for final disciplinary action. If the Board disagrees with a proposed stipulation, the Board may refer the case back to the prosecutor for more negotiations or, possibly, a hearing. If the Board disagrees with a proposed decision of an administrative law judge, it may change parts of the proposed decision, but it will have to explain why it is making the change.

There is considerable due process built into the complaint process. Registrants or their attorneys are given many opportunities to respond to proposals and to object to proposed decisions. Ultimately, if a registrant disagrees with the Board's disciplinary decision, the registrant may appeal the case to Circuit Court.

Letters are sent to complainants and licensees at various stages in the process, informing them of receipt of a complaint and the final disposition of a complaint.

1997-98 CONTINUING EDUCATION REQUIREMENTS

All auctioneers whose registration certificate will expire on December 31, 1998, must satisfy the continuing education requirement during the 1997-98 biennium in order to renew their registration in a timely manner at the end of 1998.

There are two basic alternatives for completing the requirement:

ALTERNATIVE #1: Continuing Education Courses Approved by the Department

Three courses of at least 3 hours in length at a program provider ("school") approved by the Department. A course must be approved by the Department before a school may grant a certificate of attendance to a registrant.

- Course A Auction Contracts; Trust Accounts; Conduct
- Course B Registration Requirements; Advertising
- Course C Real Estate Auctions; Federal and State Laws Related to Auctions

Four course providers have been approved as of 9/1/97.

1. Wisconsin Auctioneers Association, 2468 N. High Point Rd., Middleton, WI 53562, (608) 836-6542.
2. Southeastern School of Auctioneering, 309 Eastview Rd., Pelzer, SC 29669, (864) 947-2000. This school presents courses in Greenville, SC; Chicago, IL; Alabama and Georgia.
3. Southwest Wisconsin Technical College, 1800 Bronson Blvd., Fennimore, WI 53809, (608) 822-3262, Ext. 2221.
4. Western Wisconsin Technical College, 220 S. Main St., Viroqua, WI 54665-0431, (608) 637-2612.

ALTERNATIVE #2: Continuing Education Test-Out Exam

The test-out exam is administered by the Department on an as-needed basis in Madison or, possibly, in some other communities, depending on applications received by the Department. Dates are determined by the number of applications. An exam brochure is available. Exam brochures and application information can be obtained by calling the Exam Center at (608) 266-2852. The exam brochure describes the contents of the exam and the dates, times and places where the exam will be administered. The cost is \$43.

Might you also need a Wisconsin Seller's Permit relating to the collection of sales taxes?

Yes, in some circumstances the auctioneer is considered the retailer regarding sales tax issues and is responsible for collecting the tax. The Department of Revenue (608-266-2776) has prepared a brochure which explains the sales tax requirements for auctions.

Before doing business under any trade name, must an auctioneer or auction company notify the department in writing of a trade name?

Yes.

How long must an auctioneer maintain complete and accurate records of the auction?

For at least 2 years after the termination of any litigation.

Department of Regulation and Licensing
Auctioneers and Auction Companies
P.O. Box 8935
Madison, WI 53708-8935

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Telephones

The Division of Business Licensure & Regulation has a menu telephone system which is designed to more efficiently direct the caller to the appropriate section. The telephone number for staff is:

(608) 266-5511

After dialing this number you are asked to press 1, 2, 3 or 4. For the following requests, please press numbers as noted:

Application Form	Press 11
Complaints Against Licensees	Press 12
Verification of Licensure & Name/Address Changes	Press 21
Application Processing & Requirements	Press 43

Fax Number (608) 267-3816

Board Meetings

September 28
October 26
December 7

Requests for verifications to other states must be in writing. The cost is \$10. Please make out check or money order to the Department of Regulation and Licensing.

Visit the Department's Web Site

<http://badger.state.wi.us/agencies/drl/>
Send comments to dorl@mail.state.wi.us

Wisconsin Statutes and Code

Copies of the "Statutes and Administrative Code Relating to the Practice of Auctioneers and Auction Companies" can be ordered from the Department.

Include your name, address, county and a check payable to the Department of Regulation and Licensing in the amount of \$5.28. The latest edition is dated April, 1997.

Change of Name or Address?

Please photocopy the mailing label of this digest, make changes in name or address, and return it to the Department. Confirmation of changes are not automatically provided.

WIS. STATS. S. 440.11 ALLOWS FOR A \$50 PENALTY TO BE IMPOSED WHEN CHANGES ARE NOT REPORTED WITHIN 30 DAYS.

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